COURT OF APPEALS
DIVISION TWO
OF THE STATE OF WASHINGTON

FILED
COURT OF APPEALS
DIVISION II

07 JUN -1 AM 11:55

STATE OF WASHINGTON
BY _____
DEPUTY

COURT OF APPEALS NO. 35405-5-II

CLARK COUNTY NO. 06-1-00902-9

STATE OF WASHINGTON

Respondent,

v.

JERRY WAYNE STALLINGS
(your name)

Appellant.

No. 06-1-00902-9

STATEMENT OF ADDITIONAL GROUNDS FOR REVIEW

I, JERRY STALLINGS, have received and reviewed the opening brief prepared by my attorney. Summarized below are the additional grounds for review that are not addressed in that brief. I understand the Court will review this Statement of Additional Grounds for Review when my appeal is considered on the merits.

Additional Ground 1

Miscalculation of offender score. Six points that were used in calculating my offender score had infact (washed-out). From 12/29/93 to 03/24/99 I had no criminal conduct. Therefore, any points prior to 3/24/99 fall under RCW 9.94A.525. I agreed to the fact that I had committed these prior crime. But I did'nt know about the RCW that allows class C felonies to wash-out after five years. So It's my understanding that i may raise this issue for the first time on appeal. (see attached declaration of criminal history.

Additional Ground 2

Miscalculation of offender score. I have 5 theft two's committed between 10/26/01 and 07/25/02. (see attached J&S) These five theft two's were counted as five points but should have only been counted as three under RCW 9.94A.589 same criminal conduct. There is also A issue with my cowlitz county case no. 99-1-00635-3 same criminal conduct. This would make one felony point not two.

If there are additional grounds, a brief summary is attached to this statement.

Date: 5/31/07

Signature: Jerry Stallings

Form 23

ADDITIONAL GROUND 3

Prosecutional Misconduct and error of time frame which prosection used to state when crime took place.

On count 1 of my charges prosecution says I committed this crime between 12/2/2003 and 4/1/2005. This can't be true because I was incarserated between 7/24/2003 and 5/10/2004 (see declaration of criminal history and and Inmates Kite). Prosecution cannot say this is a simple clercial error. Because you will find in the transcript Hearing before THE HONORABLE ROBERT HARRIS JULY 6, 2006. See page 5 lines 19 thru 25. Here Mr. Harvey (the prosecution) states to (conform to the evidence) he is amending the dates. What evidence??? There was no new evidence validating amending of the dates. what he is trying to manuver is the dates so it shows this prolonged period of abuse. Furthermore, this crime falls under same criminal conduct. Because it was the same date and time.

Additional Ground 4

prosecution breached the agreed upon plea.(See Hearing Heard before The Honorablr Robert Harris July 6, 2006) Page 5 Line 16 thru 18 states that I am agreeing to a agreed exceptional sentence of 25 years.Page 6 Lines 19 thru 21 indicate that the court has the authority to go above the recommendation. No where is it mentioned that I have the right to a jury to decide on a exceptional sentence. They made it sound like that was law and they could do what ever they wanted with me. And on page 8 lines 5 thru 7 I'm getting the same impression. Page 16 lines 15 thru 17 again discuss our agreed 25 year bargain. Line 18 states stipulation exceptional agreed. I'm thinking the agreed stipulation is the 25 years.

Page 17 Line 4 thru 11 the court is making ambiguous remarks that would make anyone that does not have any legal training confused. Then on line 12 thru 13 the court is telling me i can't appeal it. The court is giving me legal advice that is not true. Lines 14 & 15 my own attorney makes a comment about stipulating to an exceptional sentence. This still leaves me to believe I am agreeing to 25 years. Page 23 LInes 12 thru 18 again is not clarifing that my 25 years is not apart of my plea bargain

Now, I would like to refer to the (Hearing before The Honorable Robert Harris) dated august 24, 2006. Page 4 Line 14 thru 16 again the agreed 25 years.Page 5,17 thru 19 My attorney confirm 25 years stipulated recommendation.Page 6 Line 6 and Line 10 are refering to 25 years. Page 10 Lines 1, 4, and 25 all recommend 25. Page 20, line 4 thru 6, 9 & 10& 15 make more statements to 25 years. Page 22 Line 5, Page 28 Lines 3 & 4 There are more than 10 referances to 25 years.

Date 5/30/07

signature Jerry Hallings

Additional Ground 5

Ineffective assistance of counsel--
Counsels performance was deficient and his errors were so serious that he was not functioning as guaranteed by the 6th amendment. See July 6, 2006 transcription Page 3, line 4. This comment was edited. what was be said was, "I don't know why my client wants to take this to trial when he's going to loose anyway". Now look at the august 24, 2006 transcript. Page 21, line 23 thru 25, Here Mr. Barrar says basically the same comment. Also on the same page, line 15 thru 17 my attorney is trying to use some incrediblyabsurd strategy by belittleing me further. This is not a sound strategy.
see august 24, 2006 transcript Page 3, 10 thru 17. Here you can see that my attorney and i are having difficultys.
He has no interest in my case and the faster i get going the better he will feel. He knew I wanted a plea bargain of 25 years. And that is confermed in prosecutions brief. Prosecution wanted me to agree to 35 years and i said no. And thats why there is a line through the 35 and 25 wrote in by hand. So we all were in a agreement. Page 4, Line 16 thru 20 shows Mr. Barrar is getting indignant with the hole matter.Page 6, line 19thru 21 states, "the court does'nt have to fallow the recommendation but never explains the remedy. I am never told by my attorney that I have the option of a jury to decide weather a exceptional sentance is warrented. Ofcourse I would want a jury to decide. Why wouldn't I? It's rediculous to not want to try every possability to confirm a recommended sentence.
counsel also made no attempt to show I have mental health issues. Mental health issues that limit my memory and the ability to focus. The jail kept me in there mental health ward for 5 day. and I had to meet with there mental health proffesionals three time before being allowed in to population. Now that I'm in prison I regularly meet with mental health staff and have been diagnosed with ADHD. If the courts would have been aware of this they may have taken a bit more care in helping me with the more complex legal problems.
Counsel shows again here on page 25 Line 17 thru 20 that he is not prepared to deal with my case. On page 26 line 12 & 13 the court conferms that my charges are same criminal conduct. Yet again my attorney fails at calculating this score as one point. I have recorded Meth use that dates back to 1989. But my attorney never asks the court for a psychological evaluaion. No rashonal person could say that 28 years of Meth abuse will not produce brain damage to some extent. Mr. Barrar spent very little time with me explaining a stratagy. What he did is told me not to bug him and let him do his job. He did tell me if I didn't take the plea the video tape could end up on the Internet. He also allowed my wife to be present at my pre-trial. Which put me under such great duress that I made a quick decision to plead so i wouldn't put her through anymore grief. Also as I stated before my attorney is getting idignant at this point and is rushing me thru the steps.
So with all this said I have shown my cousel fell below yhe standard of effectiveness.

5/30/07

Jerry Hallings

Argument

State V. Smith March 6, 2007. He spent 5 crime free years in the community therefore the conviction would have washed out.

I have 6 points that should have washed out. And my counsel neglected arguing this error.

State V. Franklin

A recent case from our supreme court, State V. Mendoza 2006 Wash. Lexis 613 (filed August 17 2006), Clarifys that a defendant who has been mis advised of his standard range has the option of with drawing his plea as involuntary. Accordingly because Franklin was misadvised of his offender score when he entered his plea , remand is appropriate. On remand, Franklin may elect b between withdrawing his plea or being resentenced under the correct offender score.

State V. Bisson (2006)

If Bisson's plea was ambigous, as the majority concedes, he is entitled to specific performance of the plea ageement he reasonably believed he made. See Walsh,143 Wn.2d at 8-9

Where a plea is based on misinformation the defendant may choose apecific performance of the agreement or withdraw of guilty plea. See Miller 110 WN 2d at 531

Cousel was ineffective for not securing the plea agreement the state first promised.

CrR 4.2

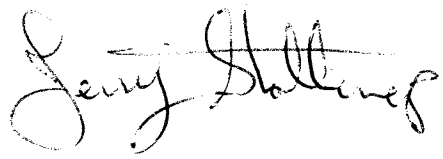
Provides that a court must permit the withdrawl of a guilty plea to correct a manifest injustice. State V. Wakefield (1996) When a defendant challenges his guilty plea based on ineffective assistance of counsel you must show reasonable probability that counsel showed deficient performance. Because of your counsels errors you were incorrectly sentanced. You have to show counsel was wrong and ineffective by not securing a promise from the state.

Notice my judgement and sentence at 2.4. see how the two boxes are X by hand. That was entered after I had been sentanced. It is the only place on the whole J&S that was entered by hand.

Isadore (2004) THe defendant has the initial choice of specific performance or withdrawal of the plea. Turley 149 WN. 2d at 399 (citing MIller, 110 WN.2d 536). The defendant is entitled to the benefit of his original bargain. State V. Tourtellotte, 88 Wn, 2d 579,585,564 p. 2d 799 (1977). Once the defendant has made his choice, the state bears the burden of show that the remedy chosen is unjust and there are compelling reasons not to allow that remedy. Turley, 149 Wn. 2d at 401. where fundamental priciples of due process are at stake, the terms of the plea agreement may be enforced.

All these errors prove a manifest injustice, defined as obvious, directly observable, overt, not obscure. And had I been effectivly counseled the outcome surely would have been differant

5/30/07



Argument

In response to the prosecutions brief. He quotes state V. Ermels. This isn't like my case because the Court Of Appeals found he did knowingly, Intelligently, and voluntarily agreed and stipulated that there was a basis for an exceptional sentence. my case is obviuosly involuntary.
Also my case differs because it does not need to be divisable. The whole plea is in error there and all I ask is to be sentenced to what I agreed to. And quite possably my standard range will be less than nine points. Ermels had plead for a less serious charge Thats not the case with me. I did'nt recieve any deals.

Prosecution also quotes State V. Steele. It reads; In taking Steele's statement, the court carefully and painstakingly advised him that he was waiving certain constitutional rights. Again that is not the case with me. There was no careful or painstaking envlved. Infact it was more like pulling the rabbit out of the hat trick. If my attorney and prosecution talk fast enough I would'nt be sharp enough to keep up.

Recap:
(1) Breach of plea agreement.

(2) ineffective assistance of counsel.

(3) incorrect offender score.
    (a) Washed-out points.
    (b) same criminal conduct.

(4) manifest injustice.

(5) errors in crime time frame.

(6) altered transcript.

5/30/07

Jerry Stallings

STATE OF WASHINGTON
DEPARTMENT OF CORRECTIONS

INMATE'S KITE
PAPELETA DE PETICION DEL RECLUSO

INMATE NAME (PRINT) NOMBRE DEL RECLUSO (LETRA DE MOLDE)		
Stallings, Jerry		
DOC NUMBER / NUMERO DOC	UNIT, CELL / UNIDAD, CELDA	DATE / FECHA
958472	GC21	4-5-07
DESIRE INTERVIEW WITH OR ANSWER FROM / DESEA ENTREVISTA CON O RESPUESTA DE		
Administration		

☐ Interpreter needed for _____ (language).
Necesito intérprete para _____ (idioma).

REASON / QUESTION
RAZON / PREGUNTA

Can You Please Give me Information Regarding my Incarseration of 5 counts of Theft 2 Sentenced 7/24/2003. I need to know how long my incarseration was.

RECEIVED
APR 09 2007

SIGNATURE / FIRMA	DAYS OFF / DIAS LIBRES
[signature]	SCCC Records

RESPONSE
RESPUESTA

[illegible] under Clark County [illegible] # [illegible]
[illegible]

RESPONDER / PERSONA QUE RESPONDE	DATE / FECHA
[illegible]	4/9/07

Distribution: **WHITE/YELLOW**-Responder, **YELLOW**-Return to Offender with Response, **PINK**-Offender keeps
Distribución: **BLANCA/AMARILLA**-Persona que responde, **AMARILLA**-Devuelva al recluso con respuesta, **ROSA**-Se le queda al recluso
DOC 21-473 E/S (7/2003) OCO

RYLANDER

S2

FILED
JUL 24 2003
JoAnne McBride, Clerk, Clark Co.

SUPERIOR COURT OF WASHINGTON
COUNTY OF CLARK

STATE OF WASHINGTON, Plaintiff,	No. 02-1-01463-1
v.	**JUDGMENT AND SENTENCE** (JS)
JERRY WAYNE STALLINGS	**PRISON**
Defendant.	
SID. WA16325693 DOB. 10/12/1963	☐ **Clerk's action required Paragraph 5.7**

03 9 04467 8

I. HEARING

1.1 A sentencing hearing was held and the defendant, the defendant's lawyer and the (deputy) prosecuting attorney were present

II. FINDINGS

There being no reason why judgment should not be pronounced, the Court FINDS:

2.1 CURRENT OFFENSE(S): The defendant was found guilty on May 19, 2003, by ☒ plea ☐ jury-verdict ☐ bench trial of

COUNT	CRIME	RCW	DATE OF CRIME
01	THEFT IN THE SECOND DEGREE	9A.56 020(1)(a)/9A 56 040(1)(a) [$250+]	07/25/2002
02	THEFT IN THE SECOND DEGREE	9A 56 020(1)(a)/9A 56 040(1)(a) [$250+]	11/08/2001
03	THEFT IN THE SECOND DEGREE	9A 56.020(1)(a)/9A.56 040(1)(a) [$250+]	11/08/2001
04	THEFT IN THE SECOND DEGREE	9A.56.020(1)(a)/9A 56.040(1)(a) [$250+]	10/26/2001
05	THEFT IN THE SECOND DEGREE	9A 56 020(1)(a)/9A 56.040(1)(a) [$250+]	10/26/2001

as charged in the Second Amended Information

☐ A special verdict/finding for use of **firearm** was returned on Count(s) _____.
RCW 9 94A 602, 510

SAME criminal conduct

CLARK COUNTY PROSECUTING ATTORNEY
1200 FRANKLIN STREET • PO BOX 5000
VANCOUVER, WASHINGTON 98666-5000
(360) 397-2261 (OFFICE)
(360) 397-2230 (FAX)

27 (8)

DOC NO: 958472 NAME: STALLINGS, JERRY W. ("AH") STATUS: ACTIVE ***

MOVEMENT DATE & TYPE		DESTINATION	REASON FOR	ORIGIN
04/26/93	NEW COMMITMENT	WA COR CTR RC	INITIAL CLASSI.	PACIFIC
07/02/93	TRANSFERRED TO	LARCH CORR CEN	INITIAL CLASSI.	WA COR CTR RC
07/19/93	TRANSFERRED TO	LONGVIEW WR	ACCEPTED IN WTR	LARCH CORR CEN
10/29/93	OUT ON FURLOUGH	CLARK	GOOD ADJUSTMENT	LONGVIEW WR
10/31/93	RET.FM.FURLOUGH	CLARK	GOOD ADJUSTMENT	LONGVIEW WR
12/17/93	OUT ON FURLOUGH	COWLITZ	GOOD ADJUSTMENT	LONGVIEW WR
12/19/93	RET.FM.FURLOUGH	COWLITZ	GOOD ADJUSTMENT	LONGVIEW WR
12/23/93	OUT ON FURLOUGH	COWLITZ	GOOD ADJUSTMENT	LONGVIEW WR
12/26/93	RET.FM.FURLOUGH	COWLITZ	GOOD ADJUSTMENT	LONGVIEW WR
12/29/93	CC RELEASE	COWLITZ	CCI TRANSFER	LONGVIEW WR

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF CLARK

STATE OF WASHINGTON, Plaintiff, v. JERRY WAYNE STALLINGS, Defendant	No. 06-1-00902-9 APPENDIX 2.2 DECLARATION OF CRIMINAL HISTORY

COME NOW the parties, and do hereby declare, pursuant to RCW 9.94A.100 that to the best of the knowledge of the defendant and his/her attorney, and the Prosecuting Attorney's Office, the defendant has the following undisputed prior criminal convictions:

CRIME	COUNTY/STATE CAUSE NO.	DATE OF CRIME	DATE OF SENTENCE	PTS.
CARRY CONCEALED WEAPON/POSSESS FIREARM	**PORTLAND/OR 890130183 SEE APPENDIX A**	**12/18/1988**	**7/12/1989**	**1**
UNAUTHORIZED USE MOTOR VEHICLE	**PORTLAND/OR 890130183 SEE APPENDIX A**	**12/18/1988**	**7/12/1989**	**1**
CRIMINAL MISCHIEF 2	MCMINNVILLE/OR 55775		7/20/1989	
POSS CONTROLLED SUBSTANCE	**PORTLAND/OR 890331533 SEE APPENDIX B**		**8/23/1989**	**1**
UNAUTHORIZED USE MOTOR VEHICLE	**ASTORIA/OR CC891063 SEE APPENDIX C**		**11/17/1989**	**1**
DELIVERY MARIJUANA OVER 40 GRAMS	**PACIFIC/WA 93-1-00023-3 SEE APPENDIX D**		**4/23/1993**	**1**
DELIVERY MARIJUANA OVER 40 GRAMS	**PACIFIC/WA 93-1-00023-3 16 MONTHS CONFINEMENT SEE APPENDIX D**		**4/23/1993**	**1**
FORGERY	**COWLITZ/WA 99-1-00265-0 SEE APPENDIX E**	**3/24/1999**	**9/28/1999**	**1**
THEFT 2	**COWLITZ/WA 99-1-00635-3 SEE APPENDIX F**	**7/8/1999**	**9/28/1999**	**1**

over 5 years crime FREE

Released 12/29/93

DECLARATION OF CRIMINAL HISTORY
Revised 9/14/2000

CLARK COUNTY PROSECUTING ATTORNEY
1013 FRANKLIN STREET
PO BOX 5000
VANCOUVER WA 98666-5000
(360) 397-2261

PCS	**COWLITZ/WA 99-1-00635-3 SEE APPENDIX F**	**7/8/1999**	**9/28/1999**	**1**
THEFT 2	**CLARK/WA 02-1-01463-1 SEE APPENDIX G**	**10/26/2001**	**7/24/2003**	**1**
THEFT 2	**CLARK/WA 02-1-01463-1 SEE APPENDIX G**	**11/7/2001**	**7/24/2003**	**1**
THEFT 2	**CLARK/WA 02-1-01463-1 SEE APPENDIX G**	**11/8/2001**	**7/24/2003**	**1**
THEFT 2	**CLARK/WA 02-1-01463-1 SEE APPENDIX G**	**11/8/2001**	**7/24/2003**	**1**
THEFT 2	**CLARK/WA 02-1-01463-1 SEE APPENDIX G**	**7/25/2002**	**7/24/2003**	**1**
				14

☐ The defendant committed a current offense while on community placement (adds one point to score). RCW 9.94A.525.

DATED this _____ day of August, 2006.

_____
Defendant

_____
Attorney for Defendant

_____
Alan E. Harvey, WSBA#25785
Deputy Prosecuting Attorney

CLARK COUNTY PROSECUTING ATTORNEY
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